

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

ROBERT PAZDZIERSKI,

Plaintiff,

vs.

**DASEKE & CO., INC., ONX1, LLC,
BIG FREIGHTS SYSTEMS, INC.,**

Defendants.

NOTICE OF REMOVAL

Onondaga County Index No.
006524/2021

Civil Action No. 5:21-CV-0966
(LEK/ATB)

Defendant, BIG FREIGHT SYSTEMS INC., incorrectly sued herein as BIG FREIGHTS SYSTEMS, INC., hereinafter “BIG FREIGHT SYSTEMS INC.”, hereby gives notice of the removal of this civil action to the United States District Court for the Northern District of New York, pursuant to 28 U.S.C. §§1441 and 1446, and in support thereof, states as follows:

1. On or about July 26, 2021, Plaintiff ROBERT PAZDZIERSKI, purportedly commenced this civil action against Defendants DASEKE & CO., INC., ONX1, LLC and BIG FREIGHT SYSTEMS, INC. in New York State Supreme Court, Onondaga County, by filing a summons and complaint with the Onondaga County Clerk’s Office, a copy of which is attached as **Exhibit A**.

2. The summons and complaint was purportedly served on BIG FREIGHT SYSTEMS INC. on July 28, 2021. A copy of the affidavit of service is attached as **Exhibit B**.

3. On August 4, 2021, Defendant BIG FREIGHT SYSTEMS INC. filed and served its answer to the complaint, a copy of which is attached hereto as **Exhibit C**.

4. On August 17, 2021, Defendant BIG FREIGHT SYSTEMS INC. filed and served an amended answer to the complaint, a copy of which is attached hereto as **Exhibit D**.

5. On August 5, 2021, plaintiff purportedly served the summons and complaint on the

co-defendant, ONX1, LLC. A copy of the affidavit of service is attached hereto as **Exhibit E**.

6. ONX1, LLC has not yet filed an answer to Plaintiff's complaint but counsel for ONX1, LLC, Brian C. Harris, Esq. of Braff, Harris, Sukoneck & Maloof, has advised the undersigned that he will be appearing for ONX1, LLC and that he consents to removal.

7. The plaintiff's summons and complaint has not been served upon co-defendant DASEKE & CO., INC. An affidavit of non-service, filed on August 12, 2021, is attached hereto as **Exhibit F**.

8. According to Plaintiff's complaint, Plaintiff, ROBERT PAZDZIERSKI, is a resident of the County of Onondaga, State of New York.

9. Defendant BIG FREIGHT SYSTEMS INC. is a foreign corporation incorporated under the laws of the Province of Manitoba, Canada with its principal place of business located at 10 Hutchings Street, Winnipeg, Manitoba.

10. Co-defendant ONX1, LLC is a foreign limited liability company incorporated under the laws of the State of Delaware with its principal place of business located at 1000 North Hwy. US 1, Suite 902, Jupiter, Florida. (See attached **Exhibit G**).

11. Co-defendant DASEKE & CO., INC., is a foreign corporation incorporated under the laws of the State of Delaware with its principal place of business located at 2 Pickwick Plaza, Greenwich, Connecticut. (See attached **Exhibit H**). Although apparently an existing corporate entity, it is believed that DASEKE & CO., INC. may no longer be conducting business and that it has no relation to this case.

12. Based upon Plaintiff's medical records provided by Plaintiff's counsel by email on August 4, 2021, it could first be determined by a preponderance of the evidence that the amount in controversy exceeds \$75,000, which pursuant to 28 U.S.C. §1446(c)(3)(A) constitutes an "other

paper" under 28 U.S.C. §1446(b)(3), given the nature and extent of the personal injuries set forth therein. The medical records have not been attached hereto or described due to privacy concerns but can be made available for the court's review.

13. Because Plaintiff is a citizen of New York State and Defendants are not a citizen of New York within the meaning of 28 U.S.C. §1332(c)(1), and because the amount in controversy can be determined to be in excess of \$75,000.00, exclusive of interest and costs, original jurisdiction is vested in this court pursuant to 28 U.S.C. §1332(a).

14. Under 28 U.S.C. §1441(a), the United States District Court for the Northern District of New York is the proper venue for removal because it encompasses the place where this action is pending.

15. Removal is timely since it is made within 30 days of receipt of Plaintiff's medical records on August 4, 2021, the date the action became removable, and within one year of the commencement of the action.

16. All documents filed in the state court action have been attached to this notice of removal.

17. Defendant is providing the state court and Plaintiff a Notice of Filing of this Notice of Removal.

WHEREFORE, Defendant BIG FREIGHT SYSTEMS INC. requests that this action be removed from the State of New York, Supreme Court, County of Onondaga, to the United States District Court for the Northern District of New York.

Dated: August 27, 2021
Buffalo, New York

BARCLAY DAMON LLP

By: /s/Vincent G. Saccamando

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